IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARY ELLEN JOHNSON, Plaintiff, v. SOUTHWEST RESEARCH INSTITUTE, Defendant.	§ § § § § § § § §	CASE NO. 5:15-CV-00297-FB-HJB

PLAINTIFF'S MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION 50-53, AND 58.

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE:

NOW COMES Plaintiff Mary Ellen Johnson and files this her Motion to Compel Responses to Requests for Production 50-53, and 58, and respectfully shows the following:

Factual Background

On December 27, 2016, Plaintiff propounded its fourth set of discovery requests to Defendant. Ex. 1. These requests were made to fill out information obtained during depositions that had recently taken place. Defendant timely responded on January 26, 2017. Ex. 2. Discovery ended on January 31, 2017.

Plaintiff files this motion to compel under Local Rule CV-16(d) since Defendant's objections and responses were served within seven days of the end of discovery.

Argument and Authorities.

Plaintiff requests this Court compel discovery responses to the following requests:

Request For Production 50

This request seeks quarterly and annual reports that discuss employment discrimination claims made at SwRI. This information is relevant because "the atmosphere in which the plaintiff worked" is relevant "when a plaintiff must prove intentional discrimination." *See Kelly v. Boeing Petroleum Servs.*, 61 F.3d 350, 358 (5th Cir. 1995). "Evidence of other wrongs or acts may be admissible to prove, for example, defendant's motive, intent, plan, knowledge or absence of mistake in an employment discrimination case." *See Marchese v. Secretary, Dep't of the Interior, Civ.A.* 03-3082, 2004 WL 2297465 at *2 (E.D. La. Oct. 12, 2004).

Pursuant to this Court's order of March 7, 2016, which set the relevant time period as January 1, 2009 to December 31, 2012, Plaintiff agrees to limit her request to the time frame Jan. 1, 2009 to December 31, 2012. Contrary to Defendant's objection, this request is not unduly burdensome or overbroad because it seeks specific reports already compiled that are currently in possession of Mr. Magaro, going back to 2009. *See* Ex. 3 (Magaro Dep. 14-16).

Requests For Production 51 and 58

These requests seek adverse information reports for employees. SwRI's only objection is that these reports are not in SwRI's possession. However, this cannot be true for at least three reasons. First, SwRI produced these documents regarding Ms. Johnson. Second, the adverse information reports are sent to Mike McGoffin, who is a SwRI's employee. Third, it does not make sense that SwRI would not keep copies of documents sent to the Department of Defense regarding employees who allegedly pose a risk. *See* Ex. 3 (Magaro Dep. 71); Ex. 4 (Ryan Depo. 140).

Request for Production 52

This request seeks recommendations for termination written by Bill Ryan since 2009. Plaintiff is willing to limit the end date to December 31, 2012. As stated above, Plaintiff is entitled to discover information about the environment in which she worked. *See Kelly v. Boeing Petroleum Servs.*, 61 F.3d 350, 358 (5th Cir. 1995). Ms. Johnson may show retaliation or pretext by showing that other individuals who made complaints to HR or the EEOC—documents requested by RFPs 50 and 53—were treated the same or not the same by Bill Ryan. One way to do that would be to compare complaints made with recommendations for termination.

Request for Production 53

This request seeks all charges for discrimination relating to gender discrimination, equal pay, or retaliation filed with the EEOC since 2009. For the same reasons that request 50, 51, 52, and 58 above are relevant, so too are these documents. One way Plaintiff could show retaliation or discrimination is if employees who have filed EEOC complaints alleging gender discrimination, equal pay claims, or retaliation were also designated as threats or recommended for termination. Furthermore, this request would not be unduly burdensome as Mr. Magaro testified that he would be able to produce these documents going back to 2009 in response to a request for production. *See* Ex. 3 (Magaro Dep. 16).

Prayer

For the forgoing reasons, Plaintiff respectfully requests this Court Compel Defendant to produce responses to the above discovery requests and to such other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Colin Walsh

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CERTIFICATE OF CONFERENCE

I hereby certify that on February 3, 2017, attorneys for Plaintiff and Defendant conferred about the subject matter of this motion, but were unable to reach agreement.

/s/Colin Walsh
Colin Walsh

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2017 I served a copy of the foregoing on counsel for Defendants via e-filing.

/s/ Colin Walsh
Colin Walsh